THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.27971 of 1996
Date: 11-04-2007

Between:
M.Armugam

Petitioner

And

The Additional Industrial Tribunal-cum-Additional Labour Court, Chandravihar Building, Hyderabad, rep. by it's Chairman and another

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.27971 of 1996

ORDER:

1. This present writ petition has been filed questioning the correctness of the Award passed by the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad, in I.D.No.153 of 1993 on 27-09-1993.

2. The writ petitioner-workman joined the service of the second respondent industry on 25-07-1975. He was said to be working as a Sweeper in the "painting shop floor" of the second respondent. As he was involved in a criminal case, the petitioner said to have stopped working on and from 07-07-1987. The petitioner admits that the Police have taken him into custody on the strength of a complaint lodged by the second respondent industry. Though he has reported to duty after being enlarged on bail, the second respondent has not entertained him to duty on the ground that criminal case was pending against him. The petitioner asserts that he had reported to duty again along with a copy of the judgment rendered by the Criminal Court on 16-03-1988 and in spite of his acquittal he had not been entertained to duty by the second respondent. In those set of circumstances, he had moved the industrial dispute which was initially numbered as I.D.No.438 of 1988. Due to reorganization of the workload, the said I.D. came to be transferred to the first respondent- Additional Industrial Tribunal-cum- Additional Labour Court, Hyderabad and the same was renumbered as I.D.No.153 of 1993. The said industrial dispute had been contested by the second respondent industry and ultimately on 27-09-1993 the

Labour Court had held that not entertaining him to duty after he had been acquitted by the competent court amounts to illegal retrenchment and consequently ordered for his reinstatement into service but without any benefits whatsoever. The said Award passed by the Industrial Tribunal had since been notified through G.O.R.T.No.84, Women's Development Child Welfare & Labour Department dated 12-01-1994. Thus to the extent the Industrial Tribunal has denied the consequential benefits, the present writ petition has been filed.

3. The second respondent industry had contested the case and had pointed out that there is no truth in the averments made by the writ petitioner and that he had been apprehended by the Police when he has been caught red handed for mixing some chemical with "Upma Ravva" which is used for cooking purposes in the canteen and that the writ petitioner was initially convicted by the Criminal Court and on appeal he had been acquitted and even after acquittal he had not reported to duty inasmuch as he is only a casual workman who is engaged depending upon the exigency and work load. Therefore, the second respondent had pointed out that for his own default, the writ petitioner had not been entertained to duty and therefore, his conduct amounts to abandoning the employment itself and at any rate the question of not entertaining to duty a daily wage casual employee is neither here nor there and the same should be construed as retrenchment for any purposes. Since the writ petitioner is only a casual employee he is not entitled to payment of any benefits much less payment of back wages.

4. The question that falls for consideration in this writ petition is whether the Additional Industrial Tribunal-cum-Additional Labour Court is justified in declining to grant any back wages or any benefits in spite of finding him to have been retrenched illegally by the second respondent industry?

5. The undisputed facts which emerge are that the writ petitioner was working with the second respondent industry and that he had been apprehended by the Police at the instance of the second respondent on the allegation that he had mixed up some chemical with Upma Ravva in the canteen of the 2nd respondent which is used for cooking purposes and that initially he had been convicted by the trial court and it is only the appellate court which had acquitted him on 16-03-1988 and that he had immediately moved the Labour Court, inasmuch as the second respondent had declined to entertain him to duty and that the I.D.No.438 of 1988 moved by the writ petitioner came to be renumbered as I.D.No.153 of 1993 and it was ultimately allowed ordering for his reinstatement by an Award passed on 27-09-1993 which had been notified on 12-01-1994 and that the Industrial Tribunal found the action of the second respondent in not entertaining the writ petitioner to duty as amounting to illegal retrenchment and consequently it ordered the writ petitioner to be reinstated to duty but without any benefits.

6. In this factual backdrop, I am not called upon to consider or express any opinion as to the correctness or otherwise of the finding recorded by the Industrial Tribunal-cum-Labour Court that the action of the second respondent in not entertaining the writ petitioner to duty amounts to illegal retrenchment or not. Since the second respondent industry has not preferred to canvass the correctness of this part of the Award passed by the Industrial Tribunal-cum-Labour Court, it would be wholly unnecessary for me to consider it in any manner. But however, the Industrial Tribunal had declined to grant any benefits that should have flown from it's declaration that the action of the second respondent amounts to illegal retrenchment. If a workman had been illegally retrenched whether he should be awarded the benefits or not is an independent

question, which ought to have been addressed by the Industrial Tribunal-cum-Labour Court. If the Industrial Tribunal-cum-Labour Court had not bothered to assign any reasons whatsoever before it announced it's conclusion that the writ petitioner is not entitled for any benefits arising from that of the declaration that the second respondent had illegally retrenched him, then such a conclusion of the Tribunal ought to have been the result of the process of consideration. The Industrial Tribunal-cum-Labour Court abruptly announced it's conclusion that the writ petitioner is not entitled for any benefits and for arriving at such a conclusion, it had not preferred to assign the reasons that weighed with it. Therefore, the contention of the learned counsel that the Award passed by the Industrial Tribunal-cum-Labour Court to the extent of denying the benefits to the writ petitioner deserves to be corrected is a well taken contention. It is a well settled principle that every adjudicating agency, which brings to an end any lis between contesting parties, had to base it's conclusion upon the process of reasoning and it is those reasons which are liable to be examined for their sustainability by any corrective forum. I have therefore no hesitation to agree with the contention of the learned counsel for the writ petitioner that the conclusion reached by the Labour Court for denying the writ petitioner any benefits is not a sustainable one.

7. Since it is fairly an old matter it does not serve any meaningful purpose by remitting the matter back for fresh consideration by the Industrial Tribunal-cum-Labour Court to ascertain the quantum of benefits that are liable to be awarded in favour of the writ petitioner. I therefore, take upon the question of ascertaining the necessary quantum of benefits which are liable to be awarded in favour of the writ petitioner-workman given the situation that the action of the second respondent industry in not entertaining him to duty thus amounts to

retrenchment.

8. In terms of the provisions contained in the Industrial Disputes Act, 1947, a forum has been created before which the lis between workmen on the one hand and their employers on the other can be brought forth for adjudication and in the process enforceability of a contract of employment had been statutorily rendered permis sible. In that view of the matter, the relief that is liable to be granted wherever the retrenchment has been declared illegal had fallen for consideration in several cases before this court as well as the Supreme Court. The learned counsel for the writ petitioner had placed reliance upon the decisions in **Divisional Engineer Telecom, Coaxial Cable Project, Rajahmundry Vs. Mamidi Venkata Ramana and another**[1], **Allahabad Jal Sansthan Vs. Daya Shankar Rai** [2], **G.M. Tank Vs. State of Gujrath and others**[3] and **V.C.Banaras Hindu University Vs. Shrikant**[4].

9. The learned counsel for the second respondent had placed reliance upon the decision in **General Manager, Hyaryana Roadways Vs. Rudhan Singh,**[5]

10. In the case of **General Manager, Haryana Roadways Vs. Rudhan Singh (5 supra),** the Supreme Court had summarized the various principles which are required to be borne in mind while dealing with payment of back wages in particular in cases of retrenchment of industrial workmen as under:

> ***" In our opinion certain factors, which are relevant for forming an opinion regarding award of back wages, have been completely ignored and, therefore, the award on this point is vitiated. The list of dates given in the special leave petition, which have not been controverted, show that though according to the own case of the respondent his services had been terminated on 28-2-1989, yet he served a demand notice praying for reinstatement in service after two-and-a-half years on 24-8-***

1991. The State Government made reference to the Industrial Tribunal,-cum-Labour Court in the year 1997, which means eight years after the termination of service. Normally, a reference should not be made after lapse of a long period. A labour dispute should be resolved expeditiously and there is no justification for the State Government to sleep over the matter and make a reference after a long period of time at its sweet will. It causes prejudice both to the workman and also to the employer. It is not possible for an employer to retain all the documents for a long period and then to produce evidence, whether oral or documentary, after years, as the officers, who may have dealt with the matter, might have left the establishment on account of superannuation or any other reason. The employer is not at fault if the reference is not made expeditiously by the State Government, but it is saddled with an award directing payment of back wages without having taken any work from the workman concerned. The plight of the workman who is thrown out of employment is equally bad as it is a question of survival for his family and he should not be left in a state of uncertainty for a long period.

There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether adhoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighted and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated,

he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment . A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calender year."

(Emphasis supplied)

11. In fact, these are the principles which have been repeatedly reiterated and followed by the Supreme Court as well as this court that the length of service rendered by the workman concerned to the industry and whether the workman had attempted to get employed, given the nature of his employment with the industry concerned and in spite of the same he had failed to secure alternative employment are undoubtedly important factors to be taken into account. This apart, permanent or regular employment *vis-à-vis* short term or daily wage employment is also another factor, which requires to be borne in mind. It is true that the writ petitioner has stated in Para 5 of his affidavit filed in support of the writ petition as follows:

> *" I humbly submit that ever since the date of removal, I remained unemployee, as I could not get any alternative employment in spite of my best efforts*."

12. Except this ritualistic statement, there is nothing on record to demonstrate the efforts said to have been made by the writ petitioner to get employed. This apart, the writ petitioner had not preferred to examine even himself before the

Industrial Tribunal concerned. It is therefore, very difficult to subscribe to the view that the writ petitioner may have remained totally unemployed for long periods. Since there was no effective denial of this averment from the second respondent industry, perhaps, the writ petitioner had not considered it necessary for examining himself as a witness and also lead further evidence to vouch for the efforts made by him to secure alternative employment. This apart, in the immediate aftermath of the apprehension of the writ petitioner by the Police, he had rendered himself incapable of rendering any service. Capped with that, he had been convicted of the charge laid against him by the Police initially. It is only the appellate court which had acquitted him of the charge by it's judgment dated 16-03-1988. Since there is no material on record as to the reasons or grounds for his acquittal, even if one were to presume that he had been acquitted honourably on 16-03-1988, till such time there is a cloud hanging over his head and the action of the 2nd respondent in not entertaining him to duty cannot be described as totally unjust. Though the Labour Court had passed it's Award on 27-09-1993 and which has been notified on 12-01-1994, the writ petitioner had taken nearly three years thereafter to institute the present writ petition only on 26-12-1996. Considering these laxities on the part of the writ petitioner, and also the fact that the nature of employment of the writ petitioner in the second respondent industry was not a permanent one, nor does that relate to a highly skilled category of employment and it is probable that the writ petitioner could have remained unemployed certainly for some period at least and though the writ petitioner is not justified wholly in his claim for payment of full back wages but certainly is right in pointing out that he is entitled for payment of partial amount of back wages and other benefits. Further I have also taken into account the probable wages received by the writ petitioner in 1987 to be of at least

Rs.500/- per month, though no material has been placed in this respect by either side. I have also taken into account and consideration the fact asserted by the second respondent that it had in the interregnum become sick. Therefore, instead of leaving the matter for further litigation, I consider it appropriate to direct the second respondent to pay a sum of Rs.20,000/- thus quantifying all the benefits which would have flown from the disengagement on 07-07-1987.

13. In these set of circumstances, I allow this writ petition by ordering second respondent to pay a sum of Rs.20,000/- (Rupees Twenty Thousand only) to the writ petitioner representing all the benefits which he was entitled to get from out of the illegal disengagement of the service on 07-07-1987 onwards. The petitioner is also entitled for costs quantified at Rs.1,000/-.

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NOOTY RAMAMOHANA RAO,J

11-04-2007

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[1] 2003 (3) ALD page 290 (DB)

[2] AIR 2005 SC page 2372

[3] (2006) 5 SCC 446

[4] 2007 1 SCC (L&S) page 327

[5] (2005) 5 SCC 591.